

(d) *Contracting Officer's decision and appeals to the Maritime Administrator—*

(1) *Where there has not been a request to cure or to be heard.* If the Contracting Officer issues a written notice under paragraph (b) of this section and the party does not request within 30 days an opportunity either to cure its breach or to be heard and offer evidence in opposition to the tentative conclusion, the Contracting Officer's tentative conclusion shall become the final decision, which decision shall be final, conclusive and binding upon the party, and no appeal therefrom shall be taken to the Maritime Administrator.

(2) *Where there has been a request to cure or to be heard.* If the Contracting Officer issues a written notice under paragraph (b) of this section and the party requests within 30 days an opportunity either to cure its breach or to be heard and offer evidence in opposition to the tentative conclusion, the party shall be offered such an opportunity. Request to cure must include a proposal to cure the breach. If the Contracting Officer accepts the party's proposal to cure its breach, then such determination shall be final. A party requesting to be heard and offer evidence in opposition to the Contracting Officer's tentative conclusion shall be permitted to submit, in writing, any information, evidence or argument within a period set by the Contracting Officer after considering the wishes of the party. The Contracting Officer shall reduce his final decision to writing and furnish the party a copy, by certified mail—return receipt requested, which decision shall be final and conclusive and shall bind the party unless within 30 days of receipt of the decision the party appeals from said decision by personal delivery or by certified mail to the Maritime Administrator with notice to the Contracting Officer.

(e) *Appeals to the Maritime Administrator.* Appeals with a request for a hearing on the record, if desired, are to be transmitted pursuant to paragraph (d) of this section and are to be addressed to the Maritime Administrator. Upon the filing of an appeal, the Contracting Officer shall transmit the entire record and a copy of his final decision to the Maritime Administrator. If

a request for a hearing on the record is granted, the Maritime Administrator shall proceed pursuant to the Rules of Practice and Procedure in Part 201 of this title. The decision of the Maritime Administrator on any question of fact shall be final, conclusive and binding upon the party unless determined by a court of competent jurisdiction to be fraudulent, capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith or is not supported by substantial evidence.

[41 FR 4265, Jan. 29, 1976, as amended at 73 FR 56740, Sept. 30, 2008]

#### **§ 390.14 Departmental reports and certification.**

(a) *In general.* For each calendar year, the Secretary of Transportation shall provide the Secretary of the Treasury, within 120 days after the close of such calendar year, a written report with respect to those capital construction funds under the Secretary of Transportation's jurisdiction.

(b) *Content of reports.* Each report shall set forth the name and taxpayer identification number of each person:

(1) Establishing a capital construction fund during such calendar year;

(2) Maintaining a capital construction fund as of the last day of such calendar year;

(3) Terminating a capital construction fund during such calendar year;

(4) Making any withdrawal from or deposit into (and the amounts thereof) a capital construction fund during such calendar year; or

(5) With respect to which a determination has been made during such calendar year that such person has failed to fulfill a substantial obligation under any capital construction fund agreement to which such person is a party.

[55 FR 34929, Aug. 27, 1990]

#### **APPENDIX I TO PART 390—U.S. DEPARTMENT OF TRANSPORTATION, MARITIME ADMINISTRATION—APPLICATION INSTRUCTIONS**

##### **INSTRUCTION REGARDING APPLICATION FOR A CAPITAL CONSTRUCTION FUND**

An application for a capital construction fund under 46 U.S.C. 53501 *et seq.*, the Rules and Regulations prescribed jointly by the